

REMARKS

The claims remaining in the application are claims 36, 39, 41-61, 63-93 and 95-100. There are no non-elected claims presented. The previous restriction requirement was withdrawn in the examiner's action of January 13, 2003. The election of species requirement was withdrawn in the examiner's action of August 5, 2003.

All of the pending claims have been rejected under the first and second paragraphs of 35 USC § 112. This rejection is respectfully traversed.

The claims no longer recite "less than about." The word "pH" has been added wherever it was said to be necessary by the examiner.

Redundant process limitations in the product-by-process claims have been deleted.

Partial solubilization should be readily determinable by one of ordinary skill in the art by simple observation. "Partial" simply means "incomplete." One of ordinary skill in the art is quite enabled to tell when some of the polymer in the aqueous mixture has dissolved, but some of the polymer remains undissolved.

The claims now recite a supported Markush group of specific copolymers.

However, depending on the exact composition of those copolymers, the amounts of the base necessarily added to obtain the pH limitations recited and "partial solubilization" will necessarily differ from polymer to polymer. The pH limitations and "partial solubilization" limitation should more than make up for any lack of specific amounts of base recited.

The examiner has indicated that the amounts of bioactive material in the coated pesticidal matrix should be recited. This requirement is considered to be unduly burdensome on applicants and inconsistent with published precedents.

If this aspect of the rejection is based on indefiniteness, the controlling precedent is *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). In that case it was stated that "breadth is not to be equated with indefiniteness." In the present claims it should

be noted that the coated matrix is limited to one which is "pestcidal." Thus, the lower limitation of pesticidal material in the matrix is implicitly recited.

If the basis for this aspect of the rejection is enablement, it should be noted that it is not necessary for the claims to recite all of the enabling limitations. That is the function of the descriptive portion of the specification. *In re Johnson*, 558 F.2d 1008, 1017, 194 USPQ 187, 195 (CCPA 1977), *In re Goffe*, 542 F.2d 564, 567, 191 USPQ 429, 431 (CCPA 1976) and *In re Dinh-Nguyen*, 492 F.2d 856, 181 USPQ 46 (CCPA 1974). The descriptive portion of the specification includes various operable ranges and many of the present claims recite those ranges. Those claims should at least be treated separately.

With respect to the broader claims, they recite "a coated pestcidal matrix." Thus, the claims all require that a sufficient amount of pesticide be included so that at some rate of application the products will have pesticidal activity. Those of ordinary skill in this art would certainly not have to undergo unnecessary experimentation to determine the appropriate amounts of pesticide to include in the matrices for a given use. As one of ordinary skill in this art will know, the specific pesticide, the specific crop, the specific weather conditions all play a role on rate of application at any given pesticidal content. Applicants know of no support for requiring such limitations to be present in the claims.

In light of the foregoing amendments and remarks, it is believed that all of the rejections of record have been overcome and it is respectfully requested that this application be allowed.

In the event that the examiner does not consider the application to be allowable in its present state, he is respectfully requested to contact applicants' representative by telephone prior to issuing a final rejection. If the undersigned can not be reached at the firm telephone number, the examiner is respectfully requested to call him at his home office on (301) 530-1089. A message left on the home office voice mail will be

responded to promptly.

A check in the amount of \$420.00 is attached to cover the two month extension fee.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees to Deposit Account No. 11-0345. Please credit any excess fees to such deposit account.

Respectfully submitted,

KEIL & WEINKAUF



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